IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7360 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJBHAVAN VIDEO CINEMA

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner

MR KT DAVE AGP for the Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/08/2000

ORAL JUDGEMENT

RULE. Mr K.T. Dave, learned AGP, waives service of Rule. With the consent of the learned counsel for the parties the petition is taken up for final disposal today.

2 In this petition under Article 226 of the Constitution the petitioner who is running a video cinema at Surat has challenged the orders of the District Magistrate, Surat, Deputy Secretary of the State Government and Principal Secretary of the State Government dated 24.7.1997 (Annexure-C), 14.6.1999 (Annexure-D) and 27.4.2000 (Annexure-E) respectively by which the petitioner's application for permission to reduce the seats in the petitioner's video cinema house from 200 to 125 has been rejected.

3 On 3.12.1996 the petitioner was granted licence to run a video cinema with 200 seats. On 7.4.1997 the petitioner submitted his application (Annexure-B) for permission to reduce the number of seats from 200 to 125 on the ground that there were 2-3 video cinema houses in the locality and the petitioner was not getting enough viewers and therefore the petitioner was desirous of reducing the capacity from 200 seats to 125 seats. The District Magistrate rejected that application by an order dated 24.7.1997 (Annexure-C) on the ground that by reducing the number of seats, there was a possibility of misuse of 75 seats. The petitioner's appeal came to be dismissed by the Deputy Secretary, Information & Broadcasting Department of the State Government on 14.6.1999 for the same reason. The Principal Secretary of the State Government also dismissed the petitioner's application on the same ground that it would not be possible to inspect time and again whether the petitioner is admitting 125 persons or 200 persons as even after formal reduction in the number of seats, the petitioner can continue to have 200 seats in the video cinema hall. The Principal Secretary gave an additional ground that the petitioner is paying the fixed monthly tax of Rs.4,000/= and therefore also it was not necessary to reduce the number of seats.

4 At the hearing of this petition, MR M.B. Gandhi, learned advocate for the petitioner, has submitted that the petitioner had already offered before the authorities that the petitioner is prepared to put up a wall in such a manner that there would not be any possibility of misuse as it would not be possible to place more than 125 seats in the video cinema hall and therefore there need not be any apprehension of possible misuse. Secondly, it is submitted that the petitioner was permitted to pay monthly tax of Rs.4,000/- on the basis that the petitioner had already applied for reduction in the capacity from 200 to 125 seats but if the impugned orders are permitted to operate, the petitioner will be required

to pay fixed monthly tax at about Rs.6,000/= looking to the sanctioned capacity of 200 seats.

5 Mr K.T. Dave, the learned AGP appearing for the respondents, reiterated the possibility of misuse of 75 seats if the application is granted.

6 Having heard the learned counsel for the parties, it appears to the Court that since the petitioner has already offered to put up a wall so as to eliminate the possibility of misuse of those 75 seats which are proposed to be removed, there would not be any foundation for the apprehension entertained by the authorities. Secondly, Mr Gandhi also appears to be on the firm ground that fixed monthly tax of Rs.4,000/= is being paid by him on the basis of his application for reducing the capacity from 200 to 125 seats and, therefore, if the impugned orders are upheld, the petitioner's liability would go up to Rs.6,000/= or more. The petitioner need not be compelled to pay the tax in the higher slab for the additional seats which the petitioner does not require in view of the market conditions.

7 It is also required to be noted that the petitioner had also pointed out to the authorities, particularly, the Principal Secretary to the Government that in similar cases the authorities had permitted the concerned video cinema hall owners to reduce the number of seats. Orders to that effect were passed by the District Magistrate on 22.7.1999 (Annexure-F) in the case of Dharti Video Cinema and by the same authority on 16.6.1998 (Annexure-G) in the case of Jyoti Video Cinema. There is no reason why the authorities should not have accepted the petitioner's application made under similar circumstances.

8 In view of the above discussion, the petition is allowed. The impugned orders dated 24.7.1997 (Annexure-C), 14.6.1999 (Annexure-D) and 27.4.2000 (Annexure-E) are hereby quashed and set aside. The respondents are directed to accept the petitioner's application dated 7.4.1997 at Annexure-B to the petition and to permit the petitioner to reduce the seats from 200 to 125. Rule is made absolute with no order as to costs.

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(mohd)